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1 burglary (Cal. Penal Code § 211). It appears that petitioner was subject to sentence
2 enhancements under California's "Three Strikes" law (§ 667.5), and was sentenced
3 to thirty-five years to life in state prison on or about January 17, 2003.

4 According to the petition, petitioner appealed his conviction, and the
5 California Court of Appeals affirmed the conviction in 2003. The Supreme Court of
6 California denied review in 2004. Petitioner filed a federal habeas petition on June
7 7, 2004.

8 9 DISCUSSION

10 A. Standard of Review

11 This court may entertain a petition for a writ of habeas corpus "in behalf of a
12 person in custody pursuant to the judgment of a State court only on the ground that
13 he is in custody in violation of the Constitution or laws or treaties of the United
14 States." 28 U.S.C. § 2254(a).

15 It shall "award the writ or issue an order directing the respondent to show
16 cause why the writ should not be granted, unless it appears from the application that
17 the applicant or person detained is not entitled thereto." Id. § 2243.

18 B. Legal Claims

19 Petitioner claims that his sentence constitutes cruel and unusual punishment
20 in violation of the Eighth Amendment. Liberally construed, petitioner's claim
21 appears cognizable under § 2254 and merits an answer from respondent.

22 23 CONCLUSION

24 For the foregoing reasons and for good cause shown,

25 1. The clerk shall serve by certified mail a copy of this order and the
26 petition and all attachments thereto on respondent and respondent's attorney, the
27 Attorney General of the State of California. The clerk also shall serve a copy of this
28 order on petitioner.

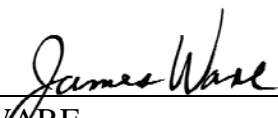
2. Respondent shall file with the court and serve on petitioner, within **sixty (60) days** of the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be issued. Respondent shall file with the answer and serve on petitioner a copy of all portions of the state trial record that have been transcribed previously and that are relevant to a determination of the issues presented by the petition.

If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the court and serving it on respondent within **thirty (30) days** of his receipt of the answer.

3. Respondent may file a motion to dismiss on procedural grounds in lieu of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases. If respondent files such a motion, petitioner shall file with the court and serve on respondent an opposition or statement of non-opposition within **thirty (30) days** of receipt of the motion, and respondent shall file with the court and serve on petitioner a reply within **fifteen (15) days** of receipt of any opposition.

4. Petitioner is reminded that all communications with the court must be served on respondent by mailing a true copy of the document to respondent's counsel. Petitioner must also keep the court and all parties informed of any change of address.

DATED: June 29 2007


JAMES WARE
United States District Judge